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TAX

Coronavirus: Tax impacts

To mitigate the economic impact of the Coronavirus (COVID-19) pandemic, certain extraordinary measures have been taken in the field of taxation. The aim of these measures is to ensure the cash flows of companies and to allow some flexibility in complying with tax obligations and in the payment of taxes by companies and individuals. The measures also recognise specific situations that amount to a justified impediment that makes it possible to postpone certain steps or extend certain procedural and administrative deadlines.

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These are the highlights of the measures that have been introduced:

1. Extension of deadlines to comply with tax obligations

Order 104/2020-XXII of 9 March 2020 of the Secretary of State for Tax Affairs provides for the extension of deadlines, with no increases or penalties, for voluntary compliance with various tax declaration obligations. These include:

- The deadline for the special payment on account that normally has to be made during the month of March has been extended to **30 June 2020**;
- The deadline to file the corporate income tax (IRC) return (Form 22) for the 2019 tax year has been extended from the end of May until **31 July 2020**;
- The deadline for the first payment on account and the first additional payment on account, which normally have to be made in July, has been extended to **31 August 2020**.

2. Split payment of taxes (VAT and personal and corporate income tax)

With regard to VAT payments under the monthly and quarterly arrangements, and to the payment to the State of amounts withheld as corporate income tax (IRC) and as personal income tax (IRS), the taxable person may opt for the following payment methods: (i) immediate payment on the usual terms; or (ii) payment split into three or six monthly instalments and, for this purpose, an application must be submitted electronically before the end of the period for voluntary payment. Interest does not apply and it is not necessary to provide a guarantee in any of the options for split payment.

The possibility to split payments only applies to taxes whose taxable event occurred as from March (with a payment date in April).

These arrangements apply to self-employed workers. They are also available to companies (i) with a turnover of up to EUR 10 million in 2018, (ii) companies that started or restarted their activity on or after 1 January 2019, and (iii) companies whose activity falls within sectors closed down under Decree-Law 2-A/2020 (for example, recreational activities, leisure and entertainment, cultural and artistic activities, sports, etc.).

"The deadlines for payment of the PEC, the first payment on account and the first additional payment on account, and the deadline for submission of the IRC Form 22 of 2019 were extended."

The other companies and self-employed workers can apply for the flexible arrangements described above if they can demonstrate that they have suffered a decrease in turnover of at least 20% on the average of the three months preceding the month in which the payment obligation arises, compared with the same period of the previous year.

When the communication of invoicing information through the *E-Fatura* system does not reflect the totality of the operations carried out that are subject to VAT (even if exempt), the fall in invoicing levels can be measured by reference to the turnover.

In any of these cases, the proof of the fall in invoicing levels must be demonstrated by certification from the statutory auditor or certified accountant.

3. Deferment of social security payment for the month of March

Following the Government press release of 19 March 2020, a decision was made to suspend, with immediate effect, the social security payments due to be made by companies, whose payment period ended 20 March 2020.

However, Decree-Law 10-F/2020 of 26 March provides that the deadline for payment of the contributions due in the month of March will, exceptionally, be 31 March 2020. Nevertheless, the employer may opt to defer the social security payments under the terms set out below.

4. Deferment of social security payments

The Decree-Law has introduced the possibility for employers to opt to defer the social security payments due between March and May 2020. In this case, one third of the value of the social security payments must be paid immediately in the month they are due. The payment of the remainder is then made in equal and successive instalments, without interest, in the months of July, August and September 2020. If the employer prefers, the payments can be deferred to the months of July to December 2020.

Employers that have already paid the full amount of the social security payments due in March 2020 can opt to defer the payments due between April and June 2020.

This deferment of payment only applies only to the social security contributions of the employer (23.75%). The part payable by the employee (11%) as a wage deduction must still be paid in full, without being split, by the generally applicable deadlines.

The option to defer payment does not require an application, but the employer must indicate its choice regarding the deadline for deferred payment on the social security site *Segurança Social Direta* in July 2020.

This measure applies immediately to employers with fewer than 50 employees. Employers that have a total of 50 to 249 employees can access this mechanism if they have suffered a fall in invoicing, communicated through *E-Fatura*, of 20% or more in the months of March, April and May when compared to the same period of the previous year.

Employers with 250 or more employees can also benefit from this scheme, provided they suffer a fall in invoicing of 20% or more, in the terms set out above, and if they are:

- private charitable institutions or equivalent;
- in one of the sectors closed down under Decree 2-A/2020 of 20 March, or they are in the aviation or tourism sectors, if the business or establishment has actually been closed down; or
- businesses whose activity has been suspended under Decree-law 10-A/2020 of 13 March, the Civil Protection Law, approved by Law 27/2006 of 3 July, or the Health Law, approved by Law 95/2019, of 4 September, if the business or establishment has actually been closed down.

When the communication of invoice information through the *E-Fatura* system does not reflect the totality of operations carried out subject to VAT (even if exempt), the fall in invoicing levels can be measured by reference to the turnover. It also depends on certification from the statutory auditor or certified accountant.

Self-employed workers can also benefit from this arrangement in relation to the payments due between April and June 2020.

Finally, any failure to meet the requirements for access to deferred social security payments means that all unpaid amounts will fall due immediately and the interest exemption will end.

5. Extraordinary support measures for employers in a business crisis situation

Decree-Law 10-G/2020 of 26 March clarified, extended and strengthened measures to support the maintenance of jobs and the allocation of extraordinary support for employers facing a business crisis situation as a result of the growing spread of the COVID-19 pandemic. The above Decree-Law repealed Ministerial Order 71-A/2020 of 15 March, of the Ministry of Employment, Social Security and Solidarity, as amended by Decree 76-B/2020, of 18 March.

For these purposes, a business crisis is considered to be:

- o (i) partial or total closure of the business or establishment resulting from the duty to close establishments and cease activities laid down in Annex I to Decree 2 -A/2020 of 20 March, or (ii) in the case of closures of establishments where procedural acts are done, by decision of a public authority based on the risk COVID-19 infection under article 15 of Decree-Law 10-A/2020 of 13 March, or under the Civil Protection Law approved by Law 27/2006 of 3 July and the Health Law approved by Law 95/2019 of 4 September, in relation to establishments and businesses that are actually closed and covering the workers directly affected; or

"Any business crisis situation must be confirmed by a declaration of the employer and a certificate from the certified accountant of the company."

- o By a declaration of the employer together with certificate from the certified accountant certifying that there has been: (i) a full or partial stoppage of activity that results from an interruption in global supply chains, or in the suspension or cancellation of orders; or (ii) a sudden and sharp fall of at least 40 % in billing in the 30 days prior to application to the Social Security compared with the corresponding period in the previous year or, for those that went into business less than 12 months ago, the average of this period.

In this situation, the business crisis must be proved by submitting documentation demonstrating: (i) the accounting balance sheet for the month of the support and for two immediately preceding months; (ii) the VAT return for the month of the support and for the two immediately preceding months, or the return for the last quarter of 2019 and the first of 2020, depending on whether the employer pays its VAT on a monthly or quarterly basis, respectively (these documents must demonstrate erratic or interrupted supply chains, or the suspension or cancellation of orders); and (iii) if applicable, documents demonstrating the cancellation of orders or reservations which mean that the use of the company or the affected unit will be reduced by more than 40% or its production or occupation capacity in the month following the one when the support is requested; and (iv) any other evidence that is required by and order of the member of the government responsible for the area of employment and social security.

To benefit from the measures provided for in Decree-Law 10-G/2020 of 26 March, as outlined below, companies must also be able to prove that they have met all their outstanding obligations to the Social Security and Tax and Customs Authority. For these purposes, this is deemed to be the case if, by 30 April 2020, no debts have been run up in the month of March 2020.

"It is established a temporary exemption from having to pay the social security contributions payable by the employer for their employees and for the members of their corporate bodies."

Highlights of the extraordinary support measures applicable to employers in a business crisis situation include:

5.1. Extraordinary assistance to maintain employment contracts in a situation of proven business crisis

The extraordinary support to maintain employment contracts will take the form of financial support destined exclusively to pay salaries, equal to two-thirds (2/3) of the worker's gross salary, or, if higher, the guaranteed minimum monthly salary, up to a maximum of EUR 1,905.

Of this amount, 70% will be guaranteed by the Social Security and 30% by the employer. The extraordinary support has a duration of one month renewable on a monthly basis, up to a maximum of 3 months.

This measure may also be combined with a training plan approved by the IEFP, I.P. (Institute for Employment and Professional Training), which includes a grant. In this case, the public authority responsible for the area of employment and professional training pays EUR 131.64 and this amount is divided equally between the employer and the employee.

In the case of a reduction or suspension of the contract of employment contract, the company is entitled to financial support to pay salary compensation to the worker, to the extent necessary, together with the pay for work done in the company or outside it, to ensure the monthly amount. This is paid 30 % by the employer and 70 % by the Social Security.

5.2. Creation of an extraordinary training plan

This measure provides extraordinary support for part-time professional training that has a duration of one month and it is supported by the IEFP, I. P. (the Institute for Employment and Professional Training).

This benefit is granted on the basis of training hours attended, up to the limit of 50% of the gross pay and with a maximum value of the guaranteed minimum monthly salary, which is EUR 635. The measure only applies to companies that do not have extraordinary support to maintain employment contracts in a crisis situation.

5.3. Extraordinary financial incentive to support the normalisation of the company's activity

An extraordinary financial incentive to support the normalisation of the company's activity has also been created. The amount corresponds to the minimum guaranteed monthly salary (EUR 635) per employee, paid for only one month.

The employer can access this incentive by submitting an application to the IEFP, I.P., together with the documents proving the crisis situation.

5.4. Exemption from payment of social security contributions

Decree-Law 10-G/2020 of 26 March also establishes a temporary exemption from having to pay the social security contributions payable by the employer for their employees and for the members of their corporate bodies. This exemption will remain in place as long as the business crisis lasts.

This measure has a duration of one month and, exceptionally, it is renewable on a monthly basis, up to a maximum of three months.

The exemption from social security contributions will also apply to self-employed workers who are employers benefiting from the extraordinary support measures, and it applies to their spouses as well.

The applicability of the exemption from payment of contributions is recognised as a matter of course, but it does not remove the obligation on employers to submit autonomous earnings declarations for the workers covered, or the obligation on self-employed workers to submit their quarterly statements.

6. Extraordinary assistance to self-employed workers with reduced economic activity

Decree-Law 10-A/2020 of 13 March provides for extraordinary assistance in the event of a reduction in economic activity. This consists of financial support corresponding to the value of the remuneration registered as the basis of calculation of social security contributions. The upper limit is the value of the Social Support Index (SSI). This extraordinary assistance can be granted to self-employed workers who meet the following requirements: (i) they are not pensioners; (ii) they are subject to compliance with the obligation to pay contributions for at least three consecutive months over a period of at least twelve months; and (iii) they are in a proven situation of total stoppage of their activity or of the activity in their sector, as a result of the COVID-19 pandemic.

Decree-Law 10-A/2020 of 13 March also provides for the application of a deferral of the social security contributions due in the months in which the extraordinary financial support is to be paid. However, those contributions will have to be paid from the second month after the termination of the support.

The Decree-Law also provides that, while the extraordinary support is being paid, self-employed workers remain under the obligation to submit their quarterly social security declarations.

"Exceptional support to the family has a minimum limit of EUR 635, corresponding to a guaranteed minimum monthly remuneration and a maximum limit of EUR 1905."

7. Exceptional family assistance

Decree-Law 10-A/2020 of 13 March provides for exceptional family assistance for employed workers in the event of a preventive isolation of the worker him or herself, their child, or other dependant in their charge, for a period of 14 days. The employee has the right to receive exceptional support equal to two thirds (i.e., 66%) of their base salary, payable in equal parts by the employer and by the Social Security. This minimum amount of this support is EUR 635, corresponding to the guaranteed minimum monthly salary. The maximum is EUR 1905.

Provision is also made for exceptional family assistance for self-employed workers who: (i) are subject to the obligation to pay social security contributions for at least three consecutive months over a period of at least twelve months; and (ii) provided they are not able to work in the same situations as those described for employed workers and provided there are no other ways of working.

The support corresponds to one third of the average monthly basis of calculation of social security contributions for the first quarter of 2020. The minimum is EUR 438.81, which corresponds to the Social Support Index (SSI, and the maximum is EUR 1097.03, which correspond to 2.5 times the SSI.

The taxation of the benefits described above raise some doubts as the basis of calculation of the social security contributions of the worker corresponds to the full amount of the support, while the employer only pays social security contributions on 50% of the remuneration it pays directly to the worker.

Following this logic, and without prejudice to subsequent clarifications, it could be understood that personal income tax is only charged on the part paid by the employer. This understanding can be reached on the assumption that this part does not qualify as social support or as a benefit. This would mean the remainder is excluded from taxation because it is a social benefit similar to unemployment benefit.

If the workers are working using alternative mechanisms, particularly in the form home working or distance training programmes, their normal pay is guaranteed and they are subject to personal income tax and social security contributions under the normal rules.

8. Recognition of a justified impediment in the fulfilment of any tax obligations

Following Order 104/2020-XXII of 9 March of the Secretary of State for Tax Affairs, the concept of justified impediment to compliance with tax declaration obligations was recognised. A justified impediment is deemed to exist when taxpayers or accountants are infected with the virus or are in preventive isolation. Note that preventive isolation refers to the period of isolation due to a possible risk of infection with COVID-19 that has been declared or determined by a health authority.

The most recent Order 129/2020-XXII of 27 March clarifies that a justified impediment applies to meeting any tax obligations, including the ones that have to be met in administrative procedures relating to the assessment of taxes, provided the impediment can be proved by submitting a declaration issued by the health authority.

Furthermore, there will also be a justified impediment when a cordon sanitaire is put in place that prevents the movement of taxpayers or certified accountants to or from the areas covered by the cordon, provided they domicile for tax or professional purposes within the cordon.

9. Postponement of procedural and administrative steps

Among other exceptional and temporary measures, Decree-Law 10-A/2020 of 13 March provides for the postponement of procedural and administrative steps if a health authority declares that any person involved in the procedure needs to go into a period of preventive isolation.

The above Decree-Law provides that such a declaration amounts to a justified impediment to completing procedural and administrative acts when these have to be done in person. This applies in any procedure, or in any administrative offence or judicial proceedings that are pending before any courts, alternative dispute resolution bodies, or other administrative bodies.

This declaration is also grounds to justify the failure to take any procedural or administrative step, and for its postponement.

"Law 1-A/2020 of 19 March also provides for the suspension of limitation periods and expiry periods concerning all processes and procedures, and even in relation to urgent cases."

10. Application of the court holiday rules to procedural and administrative acts

Law 1-A/2020 of 19 March provides that procedural and administrative acts that have to be done in processes, procedures, acts and steps being carried out in the various courts, alternative dispute resolution bodies, and other administrative bodies will be subject to the rules that apply during court holidays. These rules take effect as from 12 March 2020 and apply until the end of the measures to prevent, contain, mitigate and treat the COVID-19 pandemic, as determined by the national authority for public health.

In addition to this measure, Law 1-A/2020 of 19 March also provides for the suspension of limitation periods and expiry periods concerning all processes and procedures, and even in relation to urgent cases. In relation to the latter, the Law provides that any procedural acts and procedures can be carried out by appropriate means of distance communication. The only exception is for acts that concern fundamental rights, which may be done in person, taking into account the recommendations laid down by the health authorities.

These measures also apply to: (i) procedures before notarial offices and registries, (ii) administrative offence, disciplinary, and penalty proceedings, and (iii) administrative and tax deadlines applicable to individuals.

Finally, eviction actions, special eviction procedures and actions to recover possession of rented property are suspended, when the tenant could be placed in a vulnerable situation due to not having anywhere to live as a result of the judicial decision to be made.

11. Suspensions of ongoing tax enforcement actions and instalment payment plans

Decree-Law 10-F/2020 of 26 March provides for the application of the rules on court holidays to ongoing instalment payment plans in relation to tax enforcement proceedings. Nevertheless, debtors can continue to pay them on time.

Tax enforcement proceedings and ongoing instalments plans to pay debts to the social security are suspended until 30 June 2020, even if the situation of equivalence with court holidays ends before this date.

12. Extraordinary extension of social security benefits

Unemployment benefits and all other social security benefits that ensure minimum subsistence levels are extended until 30 June 2020.

Revaluations of the conditions to continue to receive benefits under the social security system are also suspended

13. Extension of the application of the Monthly Stamp Duty Declaration (DMIS)

Order 121/2020-XXII of 24 March of the Secretary of State for Tax Affairs determines that, because of various difficulties encountered in its implementation and in face of the current health crisis, the new Monthly Stamp Duty Declaration will only apply to acts and transactions subject to stamp duty that are carried out from 1 January 2021.

The procedure for assessment and payment of stamp duty that was in force until 31 December 2019 will continue to be followed to fulfil the obligation to assess and pay this tax in the remaining months of 2020. This procedure involves completing and submitting the multi-tax form provided for in Ministerial Order 523/2003 of 4 July.

The stamp duty relating to the months of January, February and March 2020 can be assessed and paid up 20 April 2020, without any additions or penalties.

Until 20 January 2021, taxable persons can make compensations for stamp duty if the operation is cancelled or its taxable value is reduced as a result of an error or invalidity.

14. Simplified filing of periodic VAT returns

Under Order 129/2020-XXII of 27 March, the periodic VAT returns for the period of February 2020 can be calculated based only on the information appearing *E-Fatura* system, without requiring any additional documentation.

The situation must later be regularised on the basis of all the usual support documentation, by a replacement declaration, without additions or penalties, provided the replacement and the payment or correction occurs during the month of July 2020.

This procedure will only apply to taxable persons who: (i) have a turnover of up to EUR 10 million for the year 2019; (ii) began their activity on or after 1 January 2020; or (iii) restarted their activity on or after 1 January 2020 without having reached a turnover of EUR 10 million in the previous year.

Finally, an equivalence between invoices in PDF format and electronic invoices has also been put in place, but only during the months of April, May and June.

15. Broadening of the scope of application of the VAT exemption to gratuitous transfers of items intended for disaster victims

Article 15(10)(a) of the VAT Code provides a VAT exemption for gratuitous transfers of items made by the State, private charitable institutions and non-profit NGOs to people in need. Order 122/2020-XXII of 27 March, issued by the Secretary of State for Tax Affairs, extends the scope of application of this VAT exemption provision to situations in which the items in question remain in the ownership of the bodies listed above.

In addition, the concept of people in need is also extended to cover people who are receiving health-care in the current pandemic as they are deemed to be disaster victims.

16. State aid approved by the EU

On 17 March 2020, the European Commission made a proposal for a new temporary framework for the state aid provided for in the Treaty on the Functioning of the European Union. This framework authorises Member States to provide aid to economic operators in order to prevent serious disturbances in their economies.

In this context, the European Commission has concluded in its Decision SA.56755 of 22 March that the measures proposed by the Portuguese Government are necessary, appropriate and proportionate measures to manage the impact of the pandemic on the Portuguese economy. As a result, they were approved under EU rules on state aid.

Accordingly, the European Commission authorised the Portuguese state to provide a line of credit with a total budget of EUR 3 billion intended to support small and medium-sized businesses affected by the COVID-19 pandemic. The State also provides a guarantee of 80% or 90% for credit taken out by companies in the following sectors: (i) tourism; (ii) restaurants (and other similar activities); (iii) the extractive and manufacturing industries; and (iv) activities of travel agencies, tourist entertainment, event organisation (and similar activities).

"European Commission authorised the Portuguese state to provide a line of credit with a total budget of EUR 3 billion intended to support small and medium-sized businesses."

17. Restrictions on in-person service at tax offices

Order 104/2020-XXII of 9 March 2020, issued by the Secretary of State for Tax Affairs, also provides that people should be encouraged to the use online and telephone (217 206 707) services of the Tax and Customs Authority in order to avoid people going in person to any tax office.

In-person attendance is only available in urgent cases and with a prior appointment made by telephone. ■